



**Frank Edelblut**  
Commissioner

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Deputy Commissioner

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION  
25 Hall Street  
Concord, NH 03301  
TEL. (603) 271-3495

[REDACTED]

*Re: Special Education Complaint # 24-07*

Dear [REDACTED]:

The New Hampshire Department of Education, Bureau of Special Education Support, has concluded its investigation of complaint # 24-07. Based on the findings of fact in the investigation, I am issuing my written decision as well as providing a copy of the investigator's report.

Below is a description of the allegation, as well as a summary of the investigator's findings of facts based on the evidence submitted by all parties to this matter. If an allegation is substantiated, a finding of noncompliance with special education law, then there may be a corrective action required of the district to remedy any violations of special education law. The corrective action is intended to ensure compliance with IDEA by addressing the needs of the student and the appropriate future provision of services for all students with disabilities.

By way of relevant background, the student had an Individualized Education Program (IEP) during the complaint period that was dated from [REDACTED] and was signed in consent on [REDACTED]. There was an amendment to this IEP dated [REDACTED], to reflect a change from group speech and occupational therapy services to individual services.

The student qualifies for special education services due to a primary disability category of Intellectual and a secondary disability category of Speech-Language. [REDACTED]

[REDACTED] Additionally, per the Individuals with Disabilities Education Act (IDEA), an intellectual disability is defined as, "significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested

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during the developmental period, that adversely affects a child's educational performance" (34 CFR 300.8(c)(6)).

This definition, coupled with the ██████████ summary of the student's performance, suggests a significant level of need. This information is relevant because there is inconsistency regarding the level of paraprofessional support obligated by the IEP which is the subject of this complaint. One section of the IEP, the Present Levels of Academic Achievement and Functional Performance, indicates that a 1:1 paraprofessional will provide support with "communication and behavior purposes, as well as support for core academic areas." However, other areas of the IEP including the Special Education Services, Justification for Non-Participation, and Classroom Accommodations sections reference the communication and academic support of a paraprofessional, but do not specify 1:1 individual support.

### **Allegation 1—Substantiated**

The first allegation in this matter is that the ██████████ District failed to comply with Ed 1109.03(a), which, in relevant part provides that:

The local education agency (LEA) shall provide special education, related services, supplementary aids and services, accommodations, and modifications to a child with a disability in accordance with the child's IEP.

Specifically, the complainant asserts that the District did not provide a 1:1 paraprofessional as mandated by the student's IEP.

The Present Levels of Academic Achievement and Functional Performance and the disability category of Intellectual clearly indicate the need for 1:1 paraprofessional support, but that is not reflected in the Special Education Services or Classroom Accommodation sections. This leads the Department to question what led to this discrepancy and if the needs of the child were addressed in all aspects of the IEP. Furthermore, the submitted complaint states that the student developed alopecia, which was possibly exacerbated by anxiety from school. The academic and emotional vulnerability of this student should lead any IEP team to consider how the student can be fully supported in the school environment. It is essential that language within an IEP be consistent throughout, and it appears to the Department that there was an oversight in not specifying the 1:1 paraprofessional support within other relevant sections.

### **Allegation 2—Unsubstantiated**

The second allegation in this matter is that the ██████████ District failed to comply with Ed 1101.01(d), which, in relevant part provides that:

For reevaluations, the evaluation process shall be completed within 60 days after the receipt of parental consent to evaluate.

Specifically, the complainant asserts that the District did not meet the 60-day timeline to conduct evaluations and convene the IEP team to discuss the results of the evaluations.

Consent for re-evaluation was signed by the parent on ██████████, which would make the 60th subsequent day, ██████████. The IEP team meeting to discuss eligibility was held on ██████████ which was well within the required timeframe for the District to meet its legal deadline.

## Conclusion

In reviewing this complaint, the Department considers the parents' consent to the IEP and amendment as they are written. However, the parents' complaint stems from the fundamental contradiction found within the language of the IEP. The fact that the Present Levels of Performance contained language that is similar to the wording of the Special Education Services, Justification for Non-Participation, and Classroom Accommodations pages indicates that the IEP team believed that the student required a 1:1 paraprofessional in order to be fully supported in the educational environment and to make effective progress within the general curriculum. For there to be any less than that level of individual support suggests that the student may not be receiving a free appropriate public education (FAPE) in compliance with federal law.

## Corrective Action

The [REDACTED] District will provide a 1:1 paraprofessional to support the student as specified by the location, frequency, and time of the IEP, for the remainder of the [REDACTED] school year, unless there is a change in educational placement. If there is a delay in implementing support, then missed minutes will carry over into ESY or the next school year, whichever is most relevant. The IEP team will also amend the IEP to specify 1:1 support in all relevant sections of the IEP in case the student transfers schools. Evidence of the corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

The [REDACTED] District will review their internal policies related to special education responsibility and revise, if necessary, to ensure compliance with state and federal requirements. Evidence of this corrective action must be submitted to the Department of Education Attn: Special Education Complaints, 25 Hall Street, Concord, NH 03301 by [REDACTED]

We hope that in the future the district and parent will work together to resolve any differences that may arise.

Frank Edelblut  
Commissioner of Education  
NH Department of Education